

1 FRANK FALZETTA, Cal. Bar No. 125146
SCOTT SVESLOSKY, Cal. Bar No. 217660
2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
333 South Hope Street, 48th Floor
3 Los Angeles, California 90071-1448
Telephone: 213-620-1780
4 Facsimile: 213-620-1398
ffalzetta@sheppardmullin.com
5 ssveslosky@sheppardmullin.com

6 TED C. LINDQUIST, III, Cal. Bar No. 178523
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
7 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
8 Telephone: 415-434-9100
Facsimile: 415-434-3947
9 tlindquist@sheppardmullin.com

10 Attorneys for Defendant and Counterclaimant
LIBERTY MUTUAL FIRE INSURANCE
11 COMPANY

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 LARGO CONCRETE, INC., a
California Corporation; N.M.N.
15 CONSTRUCTION, INC., a California
Corporation,

16 Plaintiffs,

17 v.

18 LIBERTY MUTUAL FIRE
19 INSURANCE COMPANY, a
Massachusetts Corporation, and DOES
20 1 through 100, inclusive.

21 Defendants.

22
23
24
25 AND RELATED COUNTERCLAIM

Case No. C07-04651 CRB (ADR)

Hon. Charles R. Breyer
[Complaint Filed: September 10, 2007]

**DEFENDANT AND
COUNTERCLAIMANT LIBERTY
MUTUAL FIRE INSURANCE
COMPANY'S REQUEST FOR
JUDICIAL NOTICE FILED IN
SUPPORT OF MOTION TO
DISQUALIFY ROXBOROUGH,
POMERANCE & NYE LLP FROM
REPRESENTING PLAINTIFFS**

[Motion, supporting declarations and
exhibits Filed and Proposed Order
Lodged Concurrently]

Date: November 30, 2007

Time: 10:00 a.m.

Place: Courtroom 8

REQUEST FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, defendant and counterclaimant Liberty Mutual Fire Insurance Company ("Liberty Mutual"), by and through its attorneys, hereby requests that the Court take judicial notice of the following documents and the statements contained therein:

1. Plaintiffs Largo Concrete, Inc.'s and N.M.N. Construction, Inc.'s (collectively "Plaintiffs") Complaint filed with the Court on September 10, 2007.

2. The complaint filed on October 1, 2002 in Tony's Fine Foods, Inc. v. Liberty Mutual Insurance Co., Alameda County Superior Court for the State of California, Case No. 2002067108 (the "Tony's Fine Foods Complaint"). A true and correct copy of the Tony's Fine Foods Complaint is attached to the Declaration of Lisa Kralik Hansen as Exhibit A.

3. The United States District Court for the Eastern District of Kentucky Opinion and Order ("Order") filed on October 20, 2006 in Republic Services, Inc. v. Liberty Mutual Insurance Co., et al., Case No. 03-494-KSF (E.D. KY). A true and correct copy of the Order is attached to the Declaration of Stephanie Renner as Exhibit B.

Dated: October 23, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



FRANK FALZETTA

Attorneys for Defendant and Counterclaimant
LIBERTY MUTUAL FIRE
INSURANCE COMPANY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within entitled action; my business address is 333 South Hope Street, 48th Floor, Los Angeles, California 90071-1448.

On **October 23, 2007**, I served the following document(s) described as **DEFENDANT AND COUNTERCLAIMANT LIBERTY MUTUAL FIRE INSURANCE COMPANY'S REQUEST FOR JUDICIAL NOTICE FILED IN SUPPORT OF MOTION TO DISQUALIFY ROXBOROUGH, POMERANCE & NYE LLP FROM REPRESENTING PLAINTIFFS** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Nicholas P. Roxborough, Esq.
Michael L. Phillips, Esq.
Roxborough, Pomerance & Nye LLP
5820 Canoga Ave., Suite 250
Woodland Hills, CA 91367

- ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- ☒ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **October 23, 2007**, at Los Angeles, California.


ANDREA J. HERNANDEZ